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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,978	07/02/2001	Fred A. Bower III	BEA920010009US1	9953
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LIEBERMAN & BRANDSDORFER, LLC			VO, LILIAN	
802 STILL CREEK LANE			ART UNIT	
GAITHERSBURG, MD 20878			PAPER NUMBER	
			2195	

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/898,978

Applicant(s)

BOWER, FRED A.

Examiner

Lilian Vo

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1 – 26 are pending.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 10 – 18 are rejected under 35 U.S.C. 101 because they are directed to non-statutory subject matter.

4. **Claims 10 - 18** are not tangibly embodied in a manner so as to be executable because the only hardware is in an intended use statement. Although the operations defined in these claims may include hardware, the claims are not tangibly embodied because it is the intent of the execution of the system and not the system itself that includes such hardware.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore et al. (US Pat. Application Publication US 2004/0133609, hereinafter Moore) in view of Logue et al. (US 6,647,421, hereinafter Logue) and further in view of applicant's admitted prior art (hereinafter AAPA).

7. Regarding **claim 1**, More discloses a method for spawning a lower priority task from a higher priority task comprising:

(a) receiving a message from a client/remote server within system (page 4, paragraph 79 and 81, page 5, paragraphs 88 - 89: receiving a request from a client. Fig 4); and

(b) launching a lower priority task in response to receipt of said message (page 4, paragraph 79 and 81, and page 5, paragraphs 88 - 89: dispatcher dispatches the request to the proper request handler to perform service such as I/O operations).

Moore did not disclose the request is from the remote administrator and/or the communication is within a firmware. Nevertheless, Logue discloses the receiving of the request is from the remote administrator (col. 6, lines 15 – 19: receive request from remote administrator). In addition, AAPA discloses such a communication within a firmware is considered well known in the art (specification page 1, lines 12 – 22). Furthermore, AAPA also discloses that communication within firmware enabling the launching of different applications at different priority levels. Therefore, it would have been obvious for an ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Logue and AAPA with Moore to have communication with the remote administrator in addition to client so that services and/or

communication can be provided to a variety of source within the computing environment as needed.

8. Regarding **claim 2**, Moore discloses the step of launching said lower priority task includes an agent (fig. 4, page 4, paragraph 79 and 81, and page 5, paragraphs 88 - 89: dispatch the request to the proper request handler to perform service such as I/O operations).

9. Regarding **claim 3**, Moore discloses the step of receiving the message from the remote source includes a dispatcher (page 4, paragraph 79 and 81, and page 5, paragraphs 88 - 89: dispatcher dispatches the request to the proper request handler to perform service such as I/O operations).

10. Regarding **claim 4**, Moore discloses the dispatcher placing the request/message in a data structure (page 4, paragraph 80, page 5, paragraph 86- 89: the data set is registered in MCAT server and kept all relevant information associated with the data set for each call/request).

11. Regarding **claim 5**, Moore did not clearly disclose the step that the dispatcher sets the flag for signaling the receipt of the message. However, Moore discloses that the dispatcher listening for incoming requests and dispatches the requests to the proper request handlers (page 4, paragraph 79). It would have been obvious for an ordinary skill in the art, to incorporate Moore's system with a step of setting a flag for signaling the receipt of request by the dispatcher

when receiving a request that forward it to a particular request handler (process agent) to be processed because Moore has different type of agents to handle different level of request.

12. Regarding **claim 6**, Moore discloses the step of launching the lower priority task includes an agent, the agent reading the data structure (fig. 4, page 4, paragraph 79 and 81, and page 5, paragraphs 88 - 89: dispatcher dispatches the request to the proper request handler to perform service such as I/O operations. Page 5, paragraph 86- 89: the data set is registered in MCAT server and kept all relevant information associated with the data set for each call/request).

With respect to the agent receiving the flag, this concept is considered well know in the art. Furthermore, it would have been obvious for an ordinary skill in the art, to incorporate Moore's system with the step of setting a flag for signaling the receipt of request by the dispatcher to a particular request handler (agent) when receiving a request since certain type of request will be handled by the appropriate request handler (process agent).

13. Regarding **claim 7**, Moore did not clearly disclose the step that the agent resets the flag associates with the receipt message. However, Moore discloses that the dispatcher listening for incoming requests and dispatches the requests to the proper request handlers (page 4, paragraph 79). It would have been obvious for an ordinary skill in the art, to incorporate Moore's system with the step of resetting the flag by the request handler (agent) after finish processing the request because different request handler will process a particular type of request.

14. Regarding **claim 8**, Moore discloses the step of launching said lower priority task includes responding to said message (page 4, paragraph 79: the dispatcher is also responsible for returning the results to clients).

15. Regarding **claim 9**, Moore discloses the higher priority task includes maintaining a level of operation (page 4, paragraph 79: the dispatcher listens for incoming requests and dispatches the requests to the proper request handler).

16. Regarding **claim 10**, Moore discloses a computer system comprising:

a remote server (page 4, paragraph 79 and 81, page 5, paragraphs 88 - 89: receiving a request from a client/remote server. Fig 4);

a device driver in communication within the system (page 4, paragraph 75, page 5, paragraphs 89, 90);

a message manager to receive a message from the client/server (page 4, paragraphs 79, 81: the dispatcher listens for incoming requests and dispatches the requests to the proper request handler. Page 5, paragraphs 88 - 89: receiving a request from a client/remote server. Fig 4); and

a task manager to launch a lower priority task from a higher priority task in response to receipt of said message (page 4, paragraph 79, page 5, paragraphs 81, 86 - 89: request handler processes the request).

Moore did not disclose the request is from the remote administrator and/or the communication between device driver and the remote administrator. Nevertheless, Logue discloses the receiving of the request is from the remote administrator (col. 6, lines 15 - 19:

receive request from remote administrator). In addition, AAPA discloses the communication between a device driver and other applications within a system (specification page 2, lines 1 - 8). Furthermore, AAPA also discloses that communication within firmware enabling the launching of different applications at different priority levels. Therefore, it would have been obvious for an ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Logue and AAPA with Moore to have communication with the remote administrator in addition to client so that services and/or communication can be provided to a variety of source within the computing environment as needed.

17. Regarding **claim 11**, Moore discloses the message manager is a dispatcher (page 4, paragraph 79 and 81, and page 5, paragraphs 88 - 89: dispatcher dispatches the request to the proper request handler to perform service such as I/O operations).

18. Regarding **claim 12**, Moore discloses the task manager is an agent (fig. 4, page 4, paragraph 79 and 81, and page 5, paragraphs 88 - 89: dispatch the request to the proper request handler to perform service such as I/O operations).

19. **Claims 13 – 18** are rejected on the same ground as stated in claims 4 - 9 above.

20. **Claims 19 and 20** are rejected on the same ground as stated in claims 1 above.

21. **Claims 21 - 24** are rejected on the same ground as stated in claims 4 - 9 above.

22. Claims 25 - 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore et al. (US Pat. Application Publication US 2004/0133609, hereinafter Moore) in view of Logue et al. (US 6,647,421, hereinafter Logue).

23. Regarding **claim 25**, Moore discloses a method for spawning a lower priority task comprising:

receiving a message from a client/remote server (page 4, paragraph 79 and 81, page 5, paragraphs 88 - 89; receiving a request from a client. Fig 4);

storing the request/message in a data structure (page 4, paragraph 80, page 5, paragraph 86- 89: the data set is registered in MCAT server and kept all relevant information associated with the data set for each call/request); and

launching a lower priority task in response to said message (page 4, paragraph 79 and 81, and page 5, paragraphs 88 - 89: dispatcher dispatches the request to the proper request handler to perform service such as I/O operations).

Moore discloses that request can be originated from a remote server. He did not clearly disclose the message is received from the remote administrator. Nevertheless, Logue discloses the receiving of the request is from the remote administrator (col. 6, lines 15 – 19: receive request from remote administrator). It would have been obvious for an ordinary skill in the art, at the time the invention was made, to incorporate Logue's teaching with Moore by servicing requests from remote administrator in addition to client so that services can be provides to a variety of source within the network as needed.

With respect to the step of setting a flag, Moore did not clearly disclose the step that setting a flag associates with the receiving of a message/request. However, Moore discloses that the dispatcher listening for incoming requests and dispatches the requests to the proper request handlers (page 4, paragraph 79). It would have been obvious for an ordinary skill in the art, to incorporate Moore's system with the step of setting a flag for signaling the receipt of request by the dispatcher when receiving a request that forward it to a particular request handler (process agent) to be processed because Moore has different type of agents to handle different level of request.

24. **Claim 26** is rejected on the same ground as stated in claim 9 above.

Response to Arguments

25. Applicant's arguments with respect to claims 1 and 19 have been considered but are moot in view of the new ground(s) of rejection.

26. Regarding applicant amendment for claims 10 – 18, a device driver is a program, which is a software and not hardware. Therefore, applicant's amendment did not overcome the 101 rejection.

27. In response to applicant's argument that Logue is nonanalogous art (page 7, last paragraph – page 8), it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which

Art Unit: 2195

the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Logue discloses a system, which providing communication with a remote administrator.

In response to applicant's argument that applicant's configuration of the administrator is not equivalent to Logue's administrator (page 8, 1st paragraph - page 9, 1st paragraph), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding applicant's arguing that Logue does not show, teach, or suggest implementing their administrator for spawning a lower priority task from a higher priority task (page 8, 1st paragraph), applicant is arguing a feature of the invention not specifically stated in the claim language, which is improper. Claim subject matter, not the specification, is the measure of invention. Limitations in the specification cannot be read into the claims for the purpose of avoiding the prior art. *In re Self*, 213 USPQ 1,5 (CCPA 1982); *In re Priest*, 199 USPQ 11,15 (CCPA 1978). Claim language did not specifically state what functions the administrator is capable of or should be performing.

Further, while it is appropriate to use the specification to determine what applicants intends a term to mean, a positive limitation from the specification cannot be read into a claim that does not impose that limitation. A broad interpretation of a claim by Office personnel will reduce the possibility that the claim, when issued, will be interpreted more broadly than is justified or intended. Applicants can always amend a claim during prosecution to better reflect

the intended scope of the claim.

28. In response to applicant's arguments against the references individually (page 1, 1st paragraph), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

29. In response to applicant's argument that the combination of Moore et al. and Logue et al. does not and cannot meet the standard set by the CAFC's interpretation of 35 U.S.C. 103(a) (page 9, 1st paragraph), the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

30. With respect to applicant's argument that Moore et al. does not teach use of a flag (page 9, 2nd paragraph), this can be seen as obviousness from Moore on page 4, paragraph 79, in which Moore discloses that the dispatcher listening for incoming requests and dispatches the requests to the proper request handlers. It would have been obvious for an ordinary skill in the art, to modify Moore's system with incorporating a step of setting a flag for signaling the receipt of request by the dispatcher when receiving a request that forward it to a particular request handler

(process agent) to be processed because Moore has different type of agents to handle different level of request.

31. Regarding applicant's remark that Moore et al. does not teach the use of flag associated with the task of launching a lower priority task and/or a flag for differentiating and handling request priorities (page 9, 2nd paragraph), applicant is arguing a feature of the invention not specifically stated in the claim language, which is improper. Claim subject matter, not the specification, is the measure of invention. Limitations in the specification cannot be read into the claims for the purpose of avoiding the prior art. In re Self, 213 USPQ 1,5 (CCPA 1982); In re Priest, 199 USPQ 11,15 (CCPA 1978).

Conclusion

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Agee et al. (US 6,621,851) disclosed step of setting and resetting the flag associates with the receiving message.

33. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lilian Vo whose telephone number is 571-272-3774. The examiner can normally be reached on Thursday 8am - 5pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lilian Vo
Examiner
Art Unit 2195

lv
May 27, 2006


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